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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/617,361
Filing Date: July 17, 2000
Appellant(s): HARRIS, DAVID N.

Larry E. Henneman, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/5/2008 appealing from the Office action mailed 3/7/2008. Examiner's answer mailed on 11/25/2008 and non-final rejection mailed on 9/3/2009 are now vacated.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Claims 67-71, 73, 82-86, 88, 96-101 and 103 were rejected over Blonder in view of Joao.

NEW GROUND(S) OF REJECTION

Claim 118 is rejected under 35 U.S.C. 102(b) as being anticipated by Blonder (5,708,422). There's a typo in the final rejection mailed on 3/7/2008 and the limitations of claim 118 is now listed under the heading of claims 60-65, 72, 74-80, 87, 89-95 and 104-118 rejected under 35 USC 102(b) in view of Blonder.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,708,422	BLONDER	01-1998
6,529,725	JOAO	3-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 60-65, 72, 74-80, 87, 89-95, 102 and 104-118 are rejected under 35 U.S.C. 102(b) as being anticipated by Blonder et al., patent number 5,708,422 (hereinafter Blonder).

With respect to claims 60-65, 72, 74-80, 87, 89-95, 102 and 104-118, Blonder teaches a method for verifying a commercial transaction comprising: receiving a transaction approval request from the merchant, the request including the account number (col. 2, lines 60-65, lines 45-50, col. 4, lines 55-65, col. 5, lines 5-10),. electronically verifying the approval request with the account holder via a separate communication from the merchant (see at least col. 2, lines 50-55, col. 3, lines 5-15, 25-35, col. 5, lines 40-50, col. 6, lines 50 - col. 7, line 5) and transmitting an approval to the merchant pursuant to a selectively enabled verification function (col. 3, lines 1-5, col. 10, lines 35-37).

Blonder also teaches a computer system for verifying a commercial transaction comprising: a processing unit for processing data and code, a memory device for

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storing data and code including a merchant communications module to facilitate a connection with the merchant for receiving a transaction approval request including a complete account number (fig. 1, col. 2, lines 60-65, lines 45-50, col. 4, lines 55-65, col. 5, lines 5-10)., an account holder communications module operative to facilitate a separate connection with the account holder for verifying the request (see at least col. 2, lines 50-55, 01. 3, lines 5-15, 25-35, col. 5, lines 40-50, col. 6, lines 50 - col. 7, line 5)., and an authorization module responsive to receipt of the approval request and transmitting an approval to the merchant only if the approval request is verified by the account holder (fig. 7, fig. 9, fig. 10 (at least), col. 10, lines 35-37).

Blonder also teaches the authorization module includes an interactive verification module responsive to the approval request and initiating a connection with the account holder and verifying the transaction request by prompting the account holder to verify the request (col. 7, line 65 - col. 9, line 30)., sending an electronic message to the account holder via a network interface and receiving a reply to the electronic message (col. 6, lines 55 - col. 7, line 3, col. 9, lines 10-30)., a telecommunications device where the interactive verification module places an automated telephone call to the account holder and includes establishing a telephone connection with the account holder, reciting a portion of the request to the account holder, and receiving verification instructions from the account holder (col. 8, lines 10-55)., the authorization module is responsive to instructions from the account holder to automatically verify subsequent transaction approval requests without further input from the account holder and instructions for enabling or disabling the electronic verification (col. 5, line 30-45, col. 7,

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lines 1-10, col. 14, lines 35-67)., the authorization module includes a master verification module responsive to the lapse of a predetermined time period and operative to disclaim the request if the request has not been verified by the account-holder (col. 7, lines 5-15, 01. 10, lines 5-20, lines 55-65)., the transaction approval request is a verification request from a third-party financial institution and the authorization module transmits indicia of verification to the third party institution (col. 5, lines 30-35, col. 9, lines 25-30).

With respect to the newly amended feature of a verification switchable between at least a first state and a second state, said first state enabling a previously established verification requirement and said second state disabling said previously established verification requirement. Blonder teaches on Figure 3, that when approval flag is set to “no” then a permissible maximum transaction can take place **without** obtaining answer or verification from the account holder, disabling notification to the card holder. Setting the Approval flag to “yes” the system **initiates** communication with the cardholder to determine if amount above a certain threshold can be authorized.

Claims 66 and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blonder (5,708,422 hereinafter Blonder).

With respect to claims 66 and 81 While Blonder teaches the interactive verification module requires authentication from the account holder prior to reciting a portion of the approval request (col. 8, lines 45-50), Blonder does not teach the use of

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an authentication code for this purpose. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to have used an authentication code prior to reciting a portion of the approval request in Blonder since, at least, personal identification numbers, or pin, are well known in the art for identifying/authenticating customers (claims 15,25). Use of the pin authentication would have at least reduced the processing and storage demands of voice recognition particularly considering the number of customers the system would need to serve.

Claims 67-71, 73, 82-86, 88, 96-101 and 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blonder in view Joao et al. (6,529,725 hereinafter Joao)

With respect to claim 67-71, 73, 82-86, 88, 96-101 and 103, Blonder teaches establishing a connection with the account holder, authenticating the account holder, transmitting a portion of the approval request, and receiving verification instructions from the account holder with respect to the approval request (col. 8, lines 10-55), but does not show waiting for a connection initiated by the account holder. Joao teaches the account holder can contact the central processing office or processing center to approve the transaction (col. 7, lines 12-18, col. 19, lines 1-7, col. 19, line 65 - col. 5). It would have been obvious to one having communication with the system as in Joao since this would have provided the customer the time he/she needed to decide whether to approve/disapprove the transaction. It also would have been obvious to have

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transmitted a notice to the account holder when the transaction approval request was disclaimed as in Joao since this would have provided a complete record of activity for the account holder.

NEW GROUNDS OF REJECTION

Claim 118 is rejected under 35 U.S.C. 102(b) as being anticipated by Blonder et al., patent number 5,708,422 (hereinafter Blonder).

With respect to claim 118, Blonder teaches a method for verifying a commercial transaction comprising:

receiving a transaction approval request from the merchant, the request including the account number (col. 2, lines 60-65, lines 45-50, col. 4, lines 55-65, col. 5, lines 5-10), electronically verifying the approval request with the account holder via a separate communication from the merchant (see at least col. 2, lines 50-55, col. 3, lines 5-15, 25-35, col. 5, lines 40-50, col. 6, lines 50 - col. 7, line 5) and transmitting an approval to the merchant pursuant to a selectively enabled verification function (col. 3, lines 1-5, col. 10, lines 35-37).

Blonder also teaches a computer system for verifying a commercial transaction comprising: a processing unit for processing data and code, a memory device for storing data and code including a merchant communications module to facilitate a connection with the merchant for receiving a transaction approval request including a complete account number (fig. 1, col. 2, lines 60-65, lines 45-50, col. 4, lines 55-65, col.

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5, lines 5-10)., an account holder communications module operative to facilitate a separate connection with the account holder for verifying the request (see at least col. 2, lines 50-55, 01. 3, lines 5-15, 25-35, col. 5, lines 40-50, col. 6, lines 50 - col. 7, line 5)., and an authorization module responsive to receipt of the approval request and transmitting an approval to the merchant only if the approval request is verified by the account holder (fig. 7, fig. 9, fig. 10 (at least), col. 10, lines 35-37).

Blonder also teaches the authorization module includes an interactive verification module responsive to the approval request and initiating a connection with the account holder and verifying the transaction request by prompting the account holder to verify the request (col. 7, line 65 - col. 9, line 30)., sending an electronic message to the account holder via a network interface and receiving a reply to the electronic message (col. 6, lines 55 - col. 7, line 3, col. 9, lines 10-30)., a telecommunications device where the interactive verification module places an automated telephone call to the account holder and includes establishing a telephone connection with the account holder, reciting a portion of the request to the account holder, and receiving verification instructions from the account holder (col. 8, lines 10-55)., the authorization module is responsive to instructions from the account holder to automatically verify subsequent transaction approval requests without further input from the account holder and instructions for enabling or disabling the electronic verification (col. 5, line 30-45, col. 7, lines 1-10, col. 14, lines 35-67)., the authorization module includes a master verification module responsive to the lapse of a predetermined time period and operative to disclaim the request if the request has not been verified by the account-holder (col. 7,

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lines 5-15, 01. 10, lines 5-20, lines 55-65)., the transaction approval request is a verification request from a third-party financial institution and the authorization module transmits indicia of verification to the third party institution (col. 5, lines 30-35, col. 9, lines 25-30).

With respect to the newly amended feature of a verification switchable between at least a first state and a second state, said first state enabling a previously established verification requirement and said second state disabling said previously established verification requirement. Blonder teaches on Figure 3, that when approval flag is set to “no” then a permissible maximum transaction can take place **without** obtaining answer or verification from the account holder, disabling notification to the card holder. Setting the Approval flag to “yes” the system **initiates** communication with the cardholder to determine if amount above a certain threshold can be authorized.

(10) Response to Argument

The 112, 2nd rejection has been withdrawn based on Appellant’s arguments.

With respect to claims 60, 75, 114,-115, 117 and 118, Appellant argues that Blonder doesn’t teach the account-holder turning the verification function off and on. The Examiner disagrees with Appellant because Blonder clearly teaches on col. 6, lines 5-10 “The approval flag field 304 alerts the card issuer that credit card transactions that violate pre-established conditions need to be authorized by the card owner as part of the card validation process. The alert flag can be turn on or off based on **pre-established conditions may be pre-selected by the card owner** or they may be

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conditions imposed by the card issuer” As can be seen above, Blonder teaches the card owner pre-establishing and pre-selecting, the approval flag to be turned on or off (i.e. approval flag set to **no** for turning it off or **yes** to turn the verification on).

With respect to claims 105 and 107, Appellant argues that Blonder doesn't teach the account holder initiating communication prior to notification. The Examiner disagrees with Appellant because Blonder teaches on col. 11, lines 43-60, “In alternative applications, the customer may have instructed the retailer (or an agent of the retailer) in person or via some communication mechanism (e.g., a phone, mail, facsimile or electronic mail) **at a time prior to the initiation of the transaction**” of the conditions under which to allow the transaction or disable the transaction. As can be seen by the passage of Blonder above, the customer initiates communication about the details of the transaction prior to the transaction taking place.

With respect to claims 74, 89, 106 and 109, Appellant argues that Blonder doesn't teach the financier submitting a verification request to a third party for verification. The Examiner disagrees with Appellant because Blonder teaches the financier (credit card issuer) using validation database 106 for verifying if the user's profile coincide with the user's transactions. The validation database 106 acting as the third party.

With respect to the arguments pertaining to claims 66 and 81, 67 and 82, 68, 69 and 84, 70, 71, 85 and 85, 73 and 88, the arguments are moot because the Appellant argues that Blonder doesn't anticipate the claims. The Examiner wants to

point out that the claims were rejected under the doctrine of 103 over Blonder n view of Joao and therefore the claims should be argued accordingly. See rejection above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be

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treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

Raquel Alvarez /Raquel Alvarez/
Primary Examiner, Art Unit 3688

Conferees:

Eric Stamber/E. W. S./
Supervisory Patent Examiner, Art Unit 3622

Yehdega Retta /Y. R./
Primary Examiner, Art Unit 3622

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Wynn W. Coggins/

Director, TC 3600